

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1114 OF 1992

Mahadeo Vithoba Ingole, since
deceased through his legal
heirs Mahadeo Vithoba Ingole
& Anr.

..Petitioners

versus

Anandrao B. Deshmukh & Anr.

..Respondents

Mr. P. M. Mengane for the Petitioners.

None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 6TH OCTOBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioners -
original tenant or his legal heirs. Respondents
served, nobody is present for them.

2. Respondent No.1 was the owner of the land
admeasuring 12 acres 31 gunthas of land of Village
Sangola, Tal : Sangola bearing Survey No. 624/1
and 624/2. The landlord applied for personal
cultivation of the land. But ultimately after
certain proceedings and appeal therefrom the

Tahsildar divided the land into two parts of 6.30 acres and 6.01 acres and put the landlord in possession of the half of these portions. The landlord was so placed in possession as per the particulars given by Advocate for the petitioners on 6.3.1958. Then on 30.9.1972 he had entered into agreement to sale his portion and actually sold it on 13.4.1973. It is this action of the landlord that was challenged by the petitioners, firstly, on the ground that landlord had no right to sell the property and the sale is in contravention of Section 63 of the Tenancy Act. This action of the landlord was challenged by the tenant under Section 84 of the Tenancy Act before the Assistant Collector. That application was allowed and landlord and the purchaser preferred revisions. Revision was allowed and the order of the Assistant Collector was set aside and therefore this petition was filed.

3. Section 84 provides for summary eviction. Application for that purpose has to be filed before the Collector and the section provides that any person unauthorisedly occupying or wrongfully in possession of any land the transfer of which either by the act of parties or by operation of law is

invalid under the provisions of this Act, may be summarily evicted by the Collector. Assistant Collector while deciding that application on 30.9.1985 in the operative order has wrongly stated "The appeal is allowed. In fact it should have been "Application is allowed". However, though he has considered the relevant provisions of Section 31, 33B or Section 34 but there is no finding given by him that the transfer by the original landlord in favour of the transferee is hit by any of the provisions of the Tenancy Act. He has also not stated which are the sub sections of the Tenancy Act which affect that transfer. When, admittedly the landlord has entered into agreement and sold the property after cultivating it for 12 years. Mere discussion of legal provision and then coming to the conclusion about breach committed by the landlord of the relevant provisions, prima facie made the order illegal and unsustainable and that was rightly set aside by the MRT. According to the Assistant Collector act of the landlord is against the provisions of Section 31 read with 39 and 37. He has reproduced section 37 and 39 but as pointed out earlier he has not given any findings how the transfer was illegal, particularly when there is no

dispute about the non compliance to the basic provision that the landlord cultivates the land within one year and cultivates it personally for 12 years. No fault therefore can be found with the order of the MRT. There is no perversity in the order. Hence, petition is dismissed. Rule is discharged. Stay, if any stands vacated. No order as to costs.

(D.G. DESHPANDE, J.)